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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVE MEDWIN and PAUL P. MCCABE

Appeal 2015-002817
Application 12/423,877
Technology Center 3600

Before JENNIFER D. BAHR, GEORGE R. HOSKINS, and SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Steve Medwin and Paul P. McCabe (Appellants)[1] appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 23–25 and 32–44.[2] We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE.

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[1] According to Appellants, the real party in interest is The Raymond Corporation. Br. 1.

[2] Claims 1–22 and 26–31 are canceled. *Id.* at A-1 (Claims App.).

SUMMARY OF INVENTION

Appellants' disclosure "relates to industrial vehicles, such as lift trucks; and more particularly to a system for sensing performance characteristics of an industrial vehicle and using those characteristics to manage the operation of the vehicle." Spec. ¶ 2. Claim 23, reproduced below from page A-1 (Claims App.) of the Appeal Brief, is illustrative of the claimed subject matter:

> 23. A method for controlling an industrial vehicle that is powered by a battery that is recharged as necessary by electricity from a utility company, wherein the utility company charges a first rate for electricity delivered during a first period of a day and charges a higher second rate for electricity delivered during a second period of the day, said method comprising:
>
> operating the industrial vehicle in a limited manner to carry loads during a restricted operation time period to prolong battery life so that recharging is not required until the first time period of the day; and
>
> enabling unrestricted operation of the industrial vehicle during an unrestricted operation time period.

REJECTIONS

Claims 42 and 44 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 23–25 and 32–44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Frader-Thompson (US 8,255,090 B2, iss. Aug. 28, 2012) and Simmons (US 5,579,227, iss. Nov. 26, 1996).

ANALYSIS

Rejection Under 35 U.S.C. § 112

Claim 43 depends directly from claim 23 and further requires "storing in a memory a definition of at least one of the restricted operation time period and the unrestricted operation time period." Br. A-3 (Claims App.). Claim 44 depends directly from claim 43 and further requires that "operating the industrial vehicle in a limited manner is in response to the definition stored in the memory." *Id.*

The Examiner finds that claim 44 is indefinite because claim 43 recites "at least one," so the stored definition could pertain to the unrestricted operation time period, and "it does not follow to operate the vehicle in a limited manner in response to definitions of . . . the unrestricted operation time period." Final Act. 2. The Examiner makes similar findings regarding claim 42. *Id.*

Appellants cite Specification paragraph 81 as explaining operation based on a definition of a restricted operation time period, and argue that "when a definition of the [unrestricted] period is stored, [a] skilled artisan reasonably knows how to configure the vehicle controller to determine when the current time is not within the [unrestricted] time period and then limit vehicle operation." Br. 5, 6. We are persuaded by Appellants' arguments.

Section 112, ¶ 2, requires the claims "to be cast in clear—as opposed to ambiguous, vague, indefinite—terms." *In re Packard*, 751 F.3d 1307, 1313 (Fed. Cir. 2014). As correctly noted by Appellants, a skilled artisan, being "a person of ordinary creativity, not an automaton" (*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007)), would be able to determine whether

the current time is within the defined time period and operate the industrial vehicle accordingly. In the example noted by the Examiner with the definition pertaining to the unrestricted time period, a skilled artisan would enable unrestricted operation of the vehicle if the current time is within defined time and would operate the vehicle in a limited manner if the current time is not within the defined time—regardless of whether the current time is within the recited "restricted operation time period" or another time period as hypothesized by the Examiner (*see* Ans. 6), as any such time period would inherently not be the unrestricted time period.

Accordingly, we do not sustain the Examiner's rejection of claims 42 and 44 as being indefinite.

Rejection Under 35 U.S.C. § 103

The Examiner finds that Frader-Thompson discloses the invention substantially as claimed in independent claim 23, including, *inter alia*, "a method for controlling an industrial vehicle" including limiting operation of "electronics" based on the rates charged by a utility company to prolong battery life. Final Act. 3 (citing Frader-Thompson, 1:36–53, 23:49–61, 27:4–52, 28:43–50). However, the Examiner then finds that "Frader-Thompson does not explicitly disclose operating industrial vehicles in a limited manner to carry loads in order to prolong battery life of the vehicles," and finds that "Simmons discloses operating an industrial vehicle in a limited manner to prolong battery life." *Id.* at 4 (citing Simmons, 4:15–50). The Examiner reasons that it would have been obvious to a skilled artisan "to provide the method of Frader-Thompson with the industrial

means as taught by Simmons in order to conserve power and resources in a commercial or industrial setting." *Id.*

Appellants traverse arguing, *inter alia*, that Frader-Thompson makes "no mention of conserving power or operating equipment in the building to prolong battery life so that battery recharging is not required until a certain time of the day." Br. 6–7. We are persuaded by Appellants' arguments.

As a threshold matter, we disagree with the Examiner's assertion that Appellants' arguments are unpersuasive per se because they are directed at individual ones of the applied references. *See* Ans. 7 (citing *In re Keller*, 642 F.2d 413 (CCPA 1981) and *In re Merck & Co.*, 800 F.2d 1091 (Fed. Cir. 1986)). Here, the Examiner made specific findings regarding the disclosure of the two cited references. Final Act. 3–4. It is these findings that Appellants persuasively argue are improper.

Regarding Frader-Thompson, the citations noted by the Examiner discuss running a compressor at night to cool a thermal mass and using the cooled mass to provide cooling during the day (*see* Frader-Thompson 23:49–61), and charging batteries at night and using the batteries to run appliances during the day (*see id.* at 27:4–52). However, as noted by Appellants, there is no discussion of limiting operation of any battery-powered device.

The Examiner's reliance on a brief discussion of monitoring mobile devices in the Summary of the Invention section of Frader-Thompson (*see* Ans. 8 (citing Frader-Thompson, 2:37–40)) is of no avail, as Frader-Thompson makes clear that mobile devices, such as a TV, computer, or video game console, are monitored regardless of where in the house they are

plugged into an outlet node. *See, e.g.*, Frader-Thompson 20:8–32. However, the Examiner does not set forth, nor does our review reveal, any disclosure of monitoring or controlling devices operating under battery power.

Accordingly, as the Examiner has failed to establish that the cited references disclose all of the recited features of claim 23, we do not sustain the Examiner's rejection of independent claim 23 as being obvious over Frader-Thompson and Simmons. Independent claim 36 contains similar recitations as independent claim 23 (*see* Br. A-2 (Claims App.)), and the Examiner makes similar findings and reasoning regarding claim 36 as with claim 23 (Final Act. 3–4). We therefore do not sustain the rejection of claim 36 for the same reasons as set forth for claim 23. Because claims 24, 25, 32–35, and 37–44 depend from either claim 23 or claim 36, and the Examiner's application of Frader-Thompson and Simmons to those claims does not remedy the foregoing errors for claims 23 and 36, we likewise do not sustain the Examiner's rejection of claims 24, 25, 32–35, and 37–44.

DECISION

The Examiner's decision to reject claims 23–25 and 32–44 is reversed.

REVERSED